

The issues before the Board on this appeal are:

1. Did claimant sustain personal injury by accident arising out of and in the course of his employment with the respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury and timely written claim?
3. What is the nature and extent of claimant's injuries and disabilities?
4. Should claimant be entitled to apply for future medical treatment?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. In October 1991, Gregory Lawson began working for Medevac, an ambulance service, maintaining the company's ambulances, wheelchair vans, and staff cars. Until Medevac acquired another ambulance fleet in either late 1994 or early 1995, Mr. Lawson did most, if not all, of the mechanical repairs and installation of equipment in the various vehicles. After Medevac acquired the vehicles from another fleet, which consisted of 10 ambulances and several staff cars, some repairs were sent out.

2. In the Spring or Summer of 1995, Mr. Lawson began experiencing numbness and cramping in his hands. He attributes the symptoms to the additional work he was doing to maintain the expanded ambulance fleet which, due to the earlier acquisition, had doubled in size. Within days after the hand symptoms began, Mr. Lawson reported them to one of his supervisors, Michael Segal, and to the company's chief executive officer, Thomas Little.

3. Although he could not recall the date, Mr. Little testified that he remembered Mr. Lawson reporting having or experiencing problems with his hands and wrists while doing his work. Because Mr. Little was aware that Mr. Lawson had injured his right elbow in 1994 and had received several months of treatment, Mr. Little assumed the hand problems were related to the elbow injury. At his deposition, Mr. Little testified, in part:

Q. [By Mr. Lutz] Mr. Lawson in the claim that we are here about today has alleged that he sustained a series of daily injuries or accidents involving his right and left hands and specifically that he has carpal tunnel from his work activities at Medevac as a mechanic. Do you recall Mr. Lawson ever mentioning to you that he had problems with or injured his hands and wrists from performing his maintenance duties?

A. [By Mr. Little] Well, I knew he had the significant injury that affected his right elbow and arm, and that is the only injury that I am aware of.

Q. So I guess your answer is that, no, you were not aware of Mr. Lawson ever reporting or mentioning a problem with his right hand and wrists?

A. I remember Greg complaining about problems with his right arm and hand and wrist and everything below the injury site. Call that a new injury or different injury, no, I don't have knowledge of that. When Greg complained about having problems with his right arm, I assumed it was a previous injury. . . .

Q. [By Mr. Mark] I'm not trying to be argumentative with you, but you have some pretty specific recollection of conversations and details, but you don't have any recollection as to even the calendar year?

A. [By Mr. Little] Most of these recollections aren't very specific at all, they are in general terms. I remember they took place. I can remember being in a room with Greg and Mike and having conversations and I can remember Greg complaining about having problems using his hands and wrists after the surgery. . . .

Q. [By Mr. Mark] You do know that after the original elbow injury Mr. Lawson came back to full duty without restrictions performing all of his regular work duties as a mechanic and we got into some of those earlier, true?

A. [By Mr. Little] Yes.

Q. In fact, at some point in time Medevac purchased another fleet and so not only did Mr. Lawson get back to his other duties, but he had an increased work duty when the other fleet came on board, true?

A. I'm not sure of the time relationship, but, yes, we did purchase another fleet and Greg did have additional responsibilities.

Q. You do specifically recall that while Mr. Lawson was performing those mechanic duties after the original accident, that he told you that he was having problems with his hands and wrists performing those duties?

A. Yes.

4. Mickey Woodrow, one of Medevac's employees who sometimes handled the company's workers compensation claims, testified that she recalled a telephone conversation that she had with Mr. Lawson in May 1995 in which he advised that he had injured his arm again. Ms. Woodrow testified, in part:

Q. [By Mr. Lutz] Do you have any independent recollection of your phone conversation with Mr. Lawson concerning Deposition Exhibit No. 1?

A. [By Ms. Woodrow] I remember Greg calling and saying that he had injured his arm again and he needed to go to the doctor.

5. According to the records kept at Occupational Medicine Associates, the clinic that treated the June 1994 elbow injury, the clinic doctors saw Mr. Lawson for his elbow on several occasions in June, July, and August 1994 and then later in December 1994, and January and February 1995. The clinic released Mr. Lawson to return to regular work on February 15, 1995. When Mr. Lawson returned to the clinic in May 1995, the doctor diagnosed recurrent medial epicondylitis.

6. CNA, the workers compensation insurance carrier that was responsible for the 1994 elbow injury, began handling the medical treatment and paying the medical bills for this new bout of symptoms. At that point, the clinic released Mr. Lawson to return to regular work and referred him to an orthopedic specialist, Dr. John G. Yost.

7. Dr. Yost saw Mr. Lawson three times from June 1995 through June 1996. On June 27, 1995, the doctor diagnosed medial epicondylitis in the right elbow. But, despite the diagnosis and symptoms, the doctor released Mr. Lawson to return to work without restrictions and return for medical treatment as needed. Six months later, in January 1996, Mr. Lawson returned to Dr. Yost and complained of numbness, tingling, and pain in his right arm from the elbow to his fingers. Mr. Lawson complained that the symptoms were becoming progressively worse and causing him to awaken at night. The doctor then ordered an EMG, which indicated that Mr. Lawson had bilateral median nerve impingement and evidence of peripheral neuropathy, which is nerve damage that is seen in diabetics. According to the history given at the time of the January 1996 EMG, Mr. Lawson was experiencing symptoms in both hands and arms. The January 24, 1996 EMG report reads, in part:

HISTORY: He complains of pain in the right elbow, which he relates to an injury in July of 1994. He also has paresthesias in the right hand, especially at the middle and ring fingers, and aching in the forearm and hand, especially at night. He is occasionally symptomatic in the left hand with paresthesias, but not often. He denied neck pain. He has insulin dependent diabetes.

On February 6, 1996, after receiving the results of the EMG, Dr. Yost diagnosed medial epicondylitis in the right elbow, bilateral carpal tunnel syndrome, and diabetic peripheral neuropathy.

8. As early as January 31, 1996, CNA learned of the EMG results and by February 12, 1996 knew of the recommended carpal tunnel surgery, which CNA later approved. In a notation in CNA's File Activities Report dated February 19, 1996, the insurance company noted that Dr. Yost had diagnosed bilateral carpal tunnel syndrome directly related to Mr. Lawson's occupation and the fact that he has been protecting his right

elbow since 1994. The next day CNA contacted Medevac's Mickey Woodrow regarding Mr. Lawson possibly doing light duty work after the recommended carpal tunnel release surgery.

9. As indicated above, Dr. Yost recommended carpal tunnel release surgery and an injection on the inside of the right elbow. The doctor believed that the majority of Mr. Lawson's symptoms were from carpal tunnel syndrome, the right worse than the left. The doctor testified:

Q. [By Mr. Lutz] And, Doctor, on that date, did you arrive at an opinion or conclusion about the causation or cause of the claimant's symptoms?

A. [By Dr. Yost] From my note of February 6, 1996, I feel that the majority of his [Mr. Lawson's] symptoms are from the carpal tunnel syndrome which I would relate to his occupation which the fact that he has been protecting his right elbow since the work-related injury of 1994. . . .

A. What I'm saying is were it not for his occupation, he would not have developed carpal tunnel syndrome.

Q. Okay. Are you relating the carpal tunnel syndrome symptoms back to a 1994 injury?

A. I am relating the carpal tunnel syndromes to his occupation and the fact that he was protecting his right elbow requiring him to use his wrist and hands more.

10. The Board finds that Mr. Lawson's symptoms in his hands and arms progressively worsened while he continued to work. Despite those worsening symptoms, Mr. Lawson continued doing his regular job duties up to March 12, 1996, the date that Dr. Yost did a right carpal tunnel release.

11. Because Dr. Yost moved, he last saw Mr. Lawson on or about May 7, 1996. As of that date, the doctor believed that Mr. Lawson had medial epicondylitis, carpal tunnel syndrome right greater than the left, surgically addressed on the right, diabetic peripheral neuropathy of both upper extremities, and possibly ulnar nerve compression in the right elbow. At their last visit, Dr. Yost released Mr. Lawson to return to work with no restrictions. Dr. Whitaker then replaced Dr. Yost as the treating physician. In December 1996, Dr. Whitaker did a carpal tunnel release on the left hand and wrist. After the December 1996 left wrist surgery, Mr. Lawson was off work until February 1997.

12. After being off work for approximately two weeks following the right wrist surgery, Mr. Lawson returned to work for Medevac on light duty. After that period of light duty, Mr. Lawson returned to his regular duties until approximately June 19, 1996, when he was fired. According to Mr. Lawson, his supervisor had asked him to falsify some maintenance records. On cross-examination, Mr. Lawson admitted to falsifying at least one recorded entry.

13. The temporary total disability benefits that were paid following both carpal tunnel release surgeries and the medical expenses incurred to treat the bilateral carpal tunnel syndrome were paid by CNA, the workers compensation insurance carrier responsible for the June 1994 right elbow injury. Mr. Lawson did not know that Reliance National Indemnity had replaced CNA as Medevac's workers compensation insurance carrier. CNA's coverage ended on February 25, 1995. According to CNA's records, it paid Mr. Lawson temporary total disability benefits at \$313 per week for 33.86 weeks for the periods from March 12 through March 31, 1996 and from June 20, 1996 through January 22, 1997.

14. When Mr. Lawson returned to the Occupational Medicine Clinic in May 1995, that treatment was authorized by both Medevac and CNA. After that date, CNA monitored Mr. Lawson's treatment and even approved the tests and treatment that were administered for the bilateral carpal tunnel syndrome.

15. Mr. Lawson filed his application for hearing with the Division of Workers Compensation on January 30, 1997. In that application, Mr. Lawson alleged that he was injured from July 1995 through March 1996.

16. Since being fired, Mr. Lawson has been self-employed repairing cars out of his home and making a nearly comparable income to that which he was earning while working for Medevac. At this point in time, Mr. Lawson is claiming permanent partial general disability benefits only to the extent of his permanent functional impairment rating.

17. At the request of Medevac and Reliance, Dr. Gary L. Baker examined and evaluated Mr. Lawson in November 1997. Dr. Baker's testimony is confusing. Although he agrees with Dr. Yost that the majority of Mr. Lawson's symptoms are from the bilateral carpal tunnel syndrome caused by Mr. Lawson's work, he later states that the preponderance of the neurological damage and impairment is from Mr. Lawson's diabetes. Dr. Baker provided two functional impairment opinions. In his January 6, 1998 letter to Medevac and Reliance's attorney, the doctor stated that Mr. Lawson had a 16 percent whole body functional impairment. The doctor wrote:

Mr. Lawson's history and physical findings are consistent with a compression neuropathy, not a cumulative trauma disorder. The claimants [sic] injuries are consistent with a cumulative injury arising out of his employment between July 1995 and March 1996. Furthermore, it seems reasonable to state that Mr. Lawson's bilateral upper limb work related diagnosis is attributable to his entire period of employment, beginning in October of 1991 and ending in June 1996.

Mr. Lawson was evaluated according to the Guide [sic] to the Evaluation of Permanent Impairment (4th Edition). Mr. Lawson retains a **fifteen percent (15%) impairment** of the left upper limb and a **twelve percent (12%) impairment** of the right upper limb, measured at the level of the forearm (200 week level). The bilateral upper limb impairment was converted to an impairment of the whole person. Mr. Lawson retains a **nine percent (9%)**

impairment of the whole person attributable to the left upper limb and a **seven percent (7%) impairment** of the whole person attributable to the right upper limb. A **total whole person impairment of sixteen percent (16%)** is assigned.

18. After speaking with Medevac and Reliance's attorney, Dr. Baker modified his opinion to apportion the impairment resulting from the work-related injury from the impairment resulting from Mr. Lawson's diabetes. According to the doctor's March 31, 1998 letter to Mr. Lutz and the doctor's deposition testimony, Dr. Baker believes Mr. Lawson has a 15 percent functional impairment in the left arm and a 6 percent functional impairment in the right arm, which convert to a 13 percent functional impairment to the whole person using the fourth edition of the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides). Again, the doctor's testimony becomes confusing as the 13 percent rating was given after the doctor was supposedly asked to provide an opinion of the functional impairment caused by Mr. Lawson's work only and not the diabetes. After providing that opinion, the doctor then testified that the preponderance of the neurological damage and permanent impairment was due to the diabetes.

19. At his attorney's request, Mr. Lawson was examined and evaluated by Dr. P. Brent Koprivica in April 1997. Dr. Koprivica found that between July 1995 and March 1996 Mr. Lawson sustained a cumulative injury to both hands and the left elbow due to repetitive hand activities. The doctor believes and testified that Mr. Lawson developed bilateral carpal tunnel syndrome, a trigger finger of the right middle finger, and left cubital tunnel syndrome as a result of the cumulative trauma that he sustained to his hands and arms starting in 1995. Using the revised third edition of the AMA Guides, Dr. Koprivica rated Mr. Lawson's right arm with a 25 percent functional impairment and rated the left arm with a 28 percent functional impairment, which convert to a 29 percent whole body functional impairment. That impairment rating excludes the impairment resulting from the 1994 right elbow injury and any impairment arising from Mr. Lawson's diabetes. Using the fourth edition of the AMA Guides, Dr. Koprivica rated Mr. Lawson's impairment at 26 percent to the whole body.

CONCLUSIONS OF LAW

1. The Appeals Board finds that Mr. Lawson sustained personal injury by accident arising out of and in the course of his employment with Medevac through his last day of work before the right carpal tunnel release surgery on March 12, 1996. The Board concludes that it is more probably true than not true that Mr. Lawson's repetitive hand activities caused him to develop carpal tunnel syndrome that progressively worsened up through March 11, 1996.

2. The Board concludes that Mr. Lawson provided Medevac with timely notice of his accidental injury. As early as May 1995 Mr. Lawson reported additional symptoms in his right arm and again requested medical treatment that was approved and authorized by both Medevac and CNA. Additionally, the Board finds that Mr. Lawson advised his supervisors that he was experiencing ongoing symptoms in his hands and related those symptoms to his work. Additionally, the Board concludes that the knowledge of the carpal tunnel

syndrome that CNA acquired in January 1996 should be imputed to Medevac because CNA was handling and controlling Mr. Lawson's medical treatment. The fact that both Medevac and CNA may have initially believed all of Mr. Lawson's symptoms were related to the 1994 elbow injury is irrelevant. The important fact is that both Medevac and CNA knew that Mr. Lawson was experiencing ongoing symptoms and Medevac knew that Mr. Lawson was relating those symptoms to his work. By late January or early February 1996, CNA knew that Dr. Yost had diagnosed bilateral carpal tunnel syndrome that was caused by Mr. Lawson's work.

3. It is disingenuous to now argue that Medevac did not have notice of an accidental injury. Medevac argues that it believed Mr. Lawson's ongoing symptoms in 1995 and 1996 were related to the 1994 elbow injury. That argument acknowledges that the company had notice, at the very least, of an aggravation of a preexisting condition, which, likewise, establishes that Medevac had notice of a potential work-related injury. The Board concludes that Mr. Lawson notified Medevac of his symptoms and that Medevac and CNA then authorized medical treatment that included two carpal tunnel release surgeries.

4. The Board concludes that Mr. Lawson provided Medevac with timely written claim. Medevac authorized medical treatment for Mr. Lawson's hands and arms, which continued at least through December 1996 when Mr. Lawson had a left carpal tunnel release. Mr. Lawson filed his written claim with Medevac and filed his application for hearing with the Division of Workers Compensation in January 1997, unquestionably within 200 days of the last payment of compensation.¹ It is undeniable that Mr. Lawson received temporary total disability compensation into January 1997 and medical benefits even after that date. Further, once medical treatment was authorized by Medevac it continued to be authorized as the company never advised Mr. Lawson that it was being discontinued.² The fact that CNA provided the medical and temporary total disability benefits, possibly in error, is not relevant.

5. The Judge found that Mr. Lawson has a 29 percent whole body functional impairment as a result of his work-related bilateral arm injuries. The Appeals Board affirms that finding as it also finds Dr. Koprivica's testimony the more persuasive.

6. Mr. Lawson has the right to seek future medical benefits for treatment of these injuries. Kansas law is well settled that every natural and direct consequence that flows from a compensable injury is also compensable under the Workers Compensation Act.³ Once an injury is established as work-related, the progression of that condition remains

¹ See K.S.A. 44-520a.

² See Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973).

³ Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

compensable under the act so long as the worsening is not shown to have been produced by a new and independent accident.⁴

7. The Board adopts the findings and conclusions set forth by the Judge in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board affirms the finding and conclusion that Mr. Lawson is entitled to receive a 29% permanent partial general disability.

Gregory Lawson is granted compensation from Medevac and Reliance Insurance Company for a March 11, 1996, accident and a 29% permanent partial general disability. Mr. Lawson is entitled to receive 33.86 weeks of temporary total disability benefits and 114.88 weeks of permanent partial general disability benefits at \$326 per week for a total award of \$48,489.24, which is ordered paid in one lump sum minus amounts previously paid.

The Appeals Board adopts the remaining orders in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Timothy G. Lutz, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

⁴ Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997).